In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6762

EMMETT J. STEBBINS, PETITIONER,

v.

INSURANCE COMPANY OF NORTH AMERICA, ET AL.,
AND
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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1. On June 30, 1970, the United States District Court for the District of Columbia held in *Stebbins* v. *Insurance Company of North America,* 3 FEP Cases 246 (hereinafter INA I), that INA had not discriminated against the petitioner on the basis of race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* The Equal Employment Opportunity Commission participated in that case as *amicus curiae,* taking the position that there was no evidence of racial discrimination. Although petitioner took no appeal from this judgment, in July 1970 he filed an independent action (INA II) in which he sought to set aside the judgment (R. 1).[1]

[1] "R." refers to the record in the court of appeals in INA II.

In addition to the original defendant, the petitioner sought, in INA II to join, as defendants, the EEOC and four of its employees (herein collectively referred to as the Commission) alleging essentially that they acted fraudulently in appearing as *amicus curiae* against his position in INA I (R. 1, 7, 19).

The Commission moved to dismiss petitioner's complaint against it on the ground that since it had not been named as a defendant in INA I, it was not properly named as a defendant in INA II, which was essentially an action under Rule 60(b), Fed. R. Civ. P., to relieve petitioner of the effect of the prior judgment (R. 6).[2] INA moved to dismiss, *inter alia*, on the grounds of *res judicata* and collateral estoppel (R. 11).

The district court dismissed petitioner's complaint as to INA on November 9, 1970 (R. 26)[3] and dismissed his action as to the Commission on January 5, 1971 (R. 37), 3 FEP Cases 251 (D.D.C.). An appeal followed.

The appeal was consolidated with another appeal arising out of litigation initiated by petitioner against the Keystone Insurance Company. The court of appeals reversed the district court's dismissal of the action in INA II on the ground that the judgment entered in INA I did not bar petitioner, under the doctrine of collateral estoppel, from relitigating the issue of his employability in INA II (R.41). *Stebbins* v. *Keystone Insurance Company,* 481 F. 2d 501 (C.A. D.C.). The court of appeals, however, affirmed the trial court's conclusion that petitioner's claims as to the Commission were without merit. 481 F. 2d at 510-511. Petitioner did not seek review of that decision in this Court.

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[2]The Commission filed a second motion to dismiss on September 28, 1970 (R. 23).

[3]The order of dismissal was modified on December 29, 1970 (R. 35).

On remand the district court granted INA's motion for summary judgment (R. 60)[4] and petitioner again appealed (R. 62), moving in the court of appeals for leave to proceed *in forma pauperis* and for leave to file a petition for a writ of mandamus.[5] The court of appeals denied petitioner's motions on February 5, 1974. Petitioner's motion to reconsider this order *en banc* was denied on February 28, 1974 (amended *sua sponte* March 13, 1974). The petition for a writ of certiorari, filed on May 23, 1974, apparently seeks review of those orders.

2. The court of appeals in *Stebbins* v. *Keystone Insurance Co., supra,* 481 F. 2d at 510-511, correctly concluded that the Commission had acted within its authority in appearing as *amicus* against petitioner's claim of racial discrimination, and that its employees had committed no wrong against petitioner. Nor does there appear to be any error in the dismissal of petitioner's other complaints on remand and second appeal (in both of which the Commission was no longer a party). The case has been thoroughly and repetitiously litigated by petitioner and no further review is merited.

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[4]On July 31, 1973, the district court denied petitioner's request to realign EEOC as a party plaintiff (R. 48). Petitioner's motion to alter or amend this order was denied on September 18, 1973 (R. 58).

[5]At this point petitioner's action was styled *Stebbins* v. *Gerhard A. Gesell, U.S. District Judge for the District of Columbia* (No. 73-8169).

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1974.